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PATENT

#9/Reconsideration
S-13-93
3600

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: HANS-UWE BAUMANN ET AL.
Serial No.: 09/891,271 Group Art Unit: 3682
Filed: JUNE 27, 2001 Examiner: BRADLEY VAN PELT
Title: RECEIVING DEVICE FOR THE PEDALS OF A MOTOR
VEHICLE

AFTER FINAL REPLY

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Sir:

Favorable reconsideration and allowance are respectfully requested for claims 1-11 in view of the following remarks.

Claims 1-3 and 6-11 were rejected under 35 USC §102(b) as being anticipated by Counts. This rejection is respectfully traversed.

In the Office Action, the application of Counts to the claimed invention has required that two claim limitation terms be given limited patentable weight. The two terms at issue are the "pre-assembled constructional unit" and "optionally removable". The Office Action states that claim limitations are given their broadest reasonable interpretation and that the relative ease at which something is removable is a relative term; therefore, the limitation does not distinguish the instantly claimed invention. However, as laid out in MPEP 2111 during patent examination, the pending claims must be given the broadest

reasonable interpretation consistent with the specification (see In re Morris, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997)). Moreover, when the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning, in order to achieve a complete exploration of the applicants' invention and its relation to the prior art. (See In re Seltz, 13 USPQ2d 1320 (Fed. Cir. 1989)). From the statements in the Office Action, the broadest reasonable interpretation of the claim limitations is not consistent with the specification, and the meaning of the term limitations as disclosed in the specification have not been used in the examination of the claimed invention. Therefore, it is respectfully submitted that the claimed invention be reconsidered, in particular, the noted claim limitations "pre-assembled constructional unit" and "optionally removable", with reference to the specification.

Notwithstanding the above-noted reason for reconsideration and withdrawal of the rejection, Counts fails to disclose or suggest, among other features, that the clutch pedal is swivellably held in an insert which forms a pre-assembled constructional unit with the clutch pedal, which said constructional unit can be fastened between projecting legs of the mounting plate and is constructed to be optionally removable. In Counts, the device for operation of a vehicle for paraplegics is clearly an add-on feature to a car. The hand control assembly which attaches to the car and to the pedals in no way forms a pre-assembled constructional unit with the clutch pedal. The clutch pedal depends downwardly below the dashboard in a conventional manner (see Col. 2, lines 43-44). The control device as disclosed in Counts is a conversion unit (see Col. 1,

line 32). Thus, the claimed invention is not anticipated by Counts, as noted above. Accordingly, withdrawal of the rejection is respectfully requested.

The Office Action is alleging that the bifurcated clevis 82 in Counts forms an insert which swivellably holds the clutch. The insert and clutch do not form a pre-assembled constructional unit in Counts. The bifurcated clevis 82 is simply attached to the clutch pedal or rod and these two elements do not form any type of pre-assembled constructional unit. The claim limitation "pre-assembled constructional unit" must be read in light of the specification when giving this term the broadest reasonable interpretation, the interpretation must be consistent with the specification. The application of Counts and the bifurcated clevis 82 with the clutch pedal is inconsistent with the specification.

Likewise, Counts does not show a pre-assembled constructional unit being constructed to be optionally removable. The term "optionally removable" must be read in light of the specification. MPEP 2173.05b gives instruction as to relative terminology as does MPEP 2111.01 to a lesser extent. When a term of degree is present in a claim, first a determination is to be made as to whether the specification provides some standard for measuring that degree. As the specification clearly provides a standard for measuring the relative degree of the claim limitation "optionally removable" at paragraphs 6, 7 and 17, the claim limitation must be read in light of the specification. In view of the request for reconsideration of the claim terminology in light of the noted sections of the Manual of Patent Examination and Procedures, reconsideration is respectfully requested.

When the terms are read in light of the specification, one of ordinary skill in the art would not view the clutch pedal in Counts to be optionally removable. Likewise, one of ordinary skill in the art would not view the clutch pedal and bifurcated clevis to be a pre-assembled constructional unit. Accordingly, withdrawal of the rejection is respectfully requested.

In view of the foregoing amendments and remarks, the application is respectfully submitted to be in condition for allowance, and prompt favorable action thereon is earnestly solicited.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #037/49843).

Respectfully submitted,

May 5, 2003



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